(3)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh.

First Appeal No.54/2006

Rambaran

Versus

Sundari & others

JUDGMENT

Post for 09-07-2007

Sd-/
Dilip Raosaheb Deshmukh
Judge

(S)

(32)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

First Appeal No.54 of 2006

Appellant Plaintiff	Rambaran, S/o Sampat, Aged about 60 years, R/o Village Harigawah, Tahsil Wadrafnagar, P.S. Ramkola, District Surguja (CG)

versus

Respondents Defendants	1) Sundari D/o. Amrit W/o Deosharan, Aged about 54 years, R/o Village Harigawah, Tahsil Wadrafnagar, P.S. Ramkola, District Surguja (CG)
	2. Sahagi D/o. Amrit W/o Bhogan, Aged about 50 years, R/o Village Harigawah, Tahsil Wadrafnagar, P.S. Ramkola, District Surguja (CG)
	3. State of Madhya Pradesh, Now State of Chhattisgarh, Through: Collector, Surguja, District Surguja (CG)

FIRST APPEAL UNDER SECTION 96 OF THE CODE OF CIVIL PROCEDURE

Present : Appellant/plaintiff by Shri Manoj Paranjpe, counsel.
Respondents No.1 & 2 by Shri D.N.Prajapati, counsel.
Respondent No.3/State by Shri Akhil Agrawal, P.L.

JUDGMENT

(Delivered on this 9th day of July, 2007)

Being aggrieved by the dismissal of Civil Suit No. 1-A/2005 for declaration of title and permanent injunction by 2nd Additional District Judge (FTC), Ramanujganj, Surguja, vide judgment dated 30.01.2006, the unsuccessful appellant/plaintiff has preferred this appeal.

33

2. It is not disputed that the appellant/plaintiff and the respondents No.1 & 2/defendants are cousins. It is also not disputed that the lands mentioned in Schedule-B (hereinafter referred to as the 'suit lands') annexed to the plaint belonged to one Dhan Singh, who died issueless. Parties belong to the Khairwar Tribal Community, an aboriginal tribe.

3. The appellant/plaintiff's case is that he is the nephew of Dhan Singh being the son of his cousin brother – Sampath and the respondents No.1 & 2/defendants are the grand-daughters of Sampath. Dhan Singh had bequeathed the suit lands by executing a Will in his favour on 25.05.1963 and had gone to Assam. Thereafter, the appellant/plaintiff was in continuous possession of the suit lands and his name was duly mutated in the revenue records in place of Dhan Singh by the Tahsildar, Wadrafnagar by order dated 30.12.1987. The respondents No.1 & 2/defendants preferred an appeal against the aforesaid order wherein the order dated 30.12.1987 was set aside and the matter was remanded to the Tahsildar. After giving opportunity of hearing to the parties, the Assistant Settlement Officer ordered mutation of the name of plaintiff on the basis of Will executed by Dhan Singh. The respondents No.1 & 2/defendants preferred Revenue Appeal No.15/A-6/93-94 before the Settlement Officer for declaration of Will as void which was allowed and mutation was ordered in the names of respondents No.1 & 2/defendants along with the plaintiff over the suit lands. Since the order dated 22.11.1999 passed by the Settlement Officer, Surguja in Revenue Appeal No. 15/A-6/93-94 had cast a cloud over the title of the plaintiff on the suit lands, the plaintiff filed Civil Suit No. 1-A/2005. It was specifically pleaded

that as per custom prevalent in Khairwar Tribal Community, a daughter did not get any share in the property of the deceased which devolved only on the sons. The relief of declaration of the order of the Settlement Officer dated 22.11.1999 in Revenue Appeal No. 15/A-6/93-94 as void, that the plaintiff was the sole owner of the suit lands and for permanent injunction to restrain respondents No.1 & 2/defendants from interfering with the possession of the appellant/plaintiff was prayed for.

4. The respondents No.1 & 2/defendants specifically denied the execution of Will by Dhan Singh in favour of the plaintiff on 25.05.1963 and pleaded that as per custom prevalent in Khairwar Tribal Community, the daughter's right of succession to the property left by the father prevalent amongst Hindus was followed, in pursuance of which, the plaintiff and the respondents No.1 &2/defendants had equal share in the suit property.

5. The learned 2nd Additional District Judge recorded a finding that the plaintiff had failed to prove execution of Will by Dhan Singh on 25.05.1963 and also the custom pleaded. On these premises, declining to declare the plaintiff as the sole owner of the suit lands, the suit was dismissed.

6. Shri Manoj Paranjpe, learned counsel for the appellant has, at the very outset, submitted that he would not assail the finding recorded by the learned 2nd Additional District Judge that execution of Will by Dhan Singh in favour of plaintiff was not proved and would press this appeal only on the ground of custom pleaded by the plaintiff. It was also not disputed that the parties being aboriginal tribes and belonging to the Khairwar

(135)

Community were not governed by the Hindu Succession Act. On the other hand, learned counsel for respondents No.1 & 2/defendants argued in support of the impugned judgment.

7. Having heard the rival contentions, the sole question that arises for determination in this appeal is whether under the custom prevalent in the Khairwar Community, the respondents No.1 & 2/defendants were excluded from succeeding to the property of Dhan Singh.

8. Admittedly, since Dhan Singh had died issueless, neither the plaintiff is the son nor respondents No.1 & 2/defendants are the daughters of Dhan Singh. While the plaintiff-Rambaran is the son of Sampath i.e. cousin brother of Dhan Singh, the respondents No.1 & 2/defendants are the grand-daughters of Sampath. Sampath was the son of Bhajawan, who was the uncle of Dhan Singh. None of the parties had either pleaded or led any evidence to show the custom prevalent in their community, in a case where the owner of the property died intestate and also issueless. Plaintiff-Rambaran deposed in paragraph 3 that if the main owner of the property died leaving behind only daughters then such daughters would get some share in the property. His witness Hari Kishan (P.W.2) has also admitted this fact that in their community if a person dies leaving behind only daughters such daughters would succeed to the property. He also admitted that respondents No.1 & 2/defendants have succeeded to the property of their late father Amrit. Plaintiff has not adduced any evidence to show that in a similar situation as prevailing in this case, as per custom prevalent, the respondents No.1 & 2/defendants would not succeed to the property left by Dhan Singh. On the other hand, Uday Chand, D.W.3 has

(36)

given specific instances in paragraph 8 of his testimony that in their community, the daughters had succeeded to the property left by their father. The learned 2nd Additional District Judge has dealt with the issue relating to custom in details and has, by a well reasoned judgment, recorded a finding that the plaintiff has miserably failed to prove that under the custom prevalent in the Khairwar Community daughters do not inherit the property left by the father. I fully concur with the reasoning as also the finding recorded by the learned 2nd Additional District Judge on issue No.2 that along with the plaintiff, the respondents No.1 & 2/defendants would also succeed to the property left by Dhan Singh. No evidence has been led by the plaintiff to show that in case of person dying issueless, his property would devolve only on the nephew and not on the grand-daughters. The learned trial Court has thus rightly refused to grant the relief for declaration of the plaintiff as the sole owner of the suit lands. No interference is called for in the impugned judgment and decree.

9. Consequently, the appeal is dismissed. In the facts and circumstances, the parties shall bear their own cost. A decree be drawn accordingly.

Sd-/
Dilip Raosaheb Deshmukh
Judge